

September 3, 2002

D.T.E. 01-31-Phase II

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts

INTERLOCUTORY ORDER ON APPEAL BY THE ATTORNEY GENERAL OF
HEARING OFFICER'S RULING ON THE PROCEDURAL SCHEDULE

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INTERLOCUTORY ORDER ON APPEAL OF THE ATTORNEY GENERAL OF
HEARING OFFICER'S RULING ON THE PROCEDURAL SCHEDULE

I. INTRODUCTION

On February 27, 2001, the Department of Telecommunications and Energy (“Department”) opened an investigation into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ (“Verizon”) retail intrastate telecommunications services in Massachusetts. On May 8, 2002, the Department issued an Order in D.T.E. 01-31-Phase I (“Phase I Order”), granting in part, and denying in part, Verizon’s request for market-based pricing flexibility for its retail business services. On June 5, 2002, pursuant to the Department’s directive in the Phase I Order, Verizon submitted a compliance filing to the Department. Verizon’s compliance with the Department’s directives in the Phase I Order regarding regulation of Verizon’s retail business services as demonstrated in Verizon’s June 5, 2002 filing, as well as determination of the appropriate framework for regulation of Verizon’s retail residential services (including Verizon’s proposed service quality plan) will compose Phase II of the Department’s investigation in D.T.E. 01-31.

On August 22, 2002, the Department held a procedural conference in this docket. At the procedural conference, following discussion of the various procedural schedules for Phase II proposed by the parties and the Department,¹ the hearing officer established a two-track procedural schedule for Phase II: Track A to evaluate Verizon’s compliance with the

¹ Proposed procedural schedules with supporting comments were submitted by AT&T Communications of New England, Inc. (“AT&T”) and the Attorney General for the Commonwealth of Massachusetts (“Attorney General” or “AG”). Verizon submitted a letter concurring with the Department’s proposed schedule.

Department's directives in the Phase I Order regarding Verizon's retail business services; and Track B to investigate the appropriate regulatory framework for Verizon's residential services and Verizon's proposed service quality plan. On August 27, 2002, the Attorney General filed an Appeal of the Hearing Officer's Ruling on the Procedural Schedule ("AG Appeal"). On August 29, 2002, Verizon filed a response to the Attorney General's Appeal ("VZ Response").

II. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General's appeal concerns Track B of the procedural schedule established by the hearing officer at the August 22, 2002 procedural conference (AG Appeal at 1 n.1).² The Attorney General argues that Verizon's proposed regulatory plan filed with the Department on June 5, 2002, would result in annual residential rate increases without further Department review, and, therefore, would constitute a "general increase in rates" under G.L. c. 159, § 20 (id. at 3). The Attorney General argues that because such increases would constitute a "general increase in rates," the Department must require Verizon to file, and should investigate over a six month period: 1) a full cost of service/revenue requirement, or, at a minimum, complete earnings data; and 2) a fully allocated Cost of Service Study/Stand-Alone Study so that the Department can properly determine the need for any proposed increase (id. at 5). The Attorney General argues that the Track B procedural schedule set by the hearing officer is inconsistent with statutory requirements and does not provide sufficient time for either

² No party has appealed Track A of the procedural schedule, therefore, the Track A procedural schedule remains as established in the August 22, 2002 procedural conference.

a general rate case investigation, including revenue requirements, or even a more limited review of earnings and appropriate return on investment (id. at 5-6). The Attorney General argues that the procedural schedule does not allow time for proper investigation of timely class-specific cost of service studies, nor does it allow time for proper auditing of Verizon's accounting (id. at 6). The Attorney General further argues that the Department should require Verizon to file tariffs for the proposed rate increases, suspend the tariffs for six months for investigation, and order Verizon to file data to permit a complete revenue requirements review or, at a minimum, a full review of earnings and return on investment (id.). The Attorney General asserts that his suggested schedule would yield a Department Order on Verizon's proposal by May 21, 2003 (id.).

In addition, the Attorney General argues that the Department should order an independent, third-party audit of Verizon's regulatory accounting (id.). Such an audit is necessary, argues the Attorney General, because there have been disastrous accounting irregularities at companies such as WorldCom and Enron, and also because Verizon itself has had accounting and reporting irregularities, both at the Federal Communications Commission ("FCC") and in California (id.). Finally, the Attorney General argues that such an audit is necessary to restore public confidence in light of these recent accounting problems and to assure the public that Verizon's rates are not yielding revenues in excess of reasonable compensation (id. at 7).

B. Verizon

Verizon argues that the Department should deny the Attorney General's appeal of the hearing officer ruling establishing the Phase II procedural schedule (VZ Response at 1).

Verizon argues that the requirements of the statute upon which the Attorney General bases his argument (G.L. c. 159, § 20) are procedural in nature and the procedural schedule as set in the August 22, 2002 procedural conference fully complies with those requirements (id. at 3).

Verizon further argues that the procedural schedule allows ample time for the Attorney General to take a contrary position from that taken by Verizon through discovery and preparation of testimony (id. at 4). Finally, Verizon argues that the Attorney General's conclusion that revenue-requirement and allocated cost-of-service studies are required to evaluate Verizon's alternative regulation proposal is without merit (id.). Verizon argues that the Department has broad discretion to implement regulatory structures that do not rely on traditional concepts of rate-of-return regulation, and that the procedural schedule established by the hearing officer does not preclude the Attorney General from making his case as to why an alternative regulatory plan should not be adopted (id.).

III. ANALYSIS AND FINDINGS

In the Phase I Order, the Department characterized our Phase II investigation into the appropriate framework for regulation of Verizon's residential services in the following way:

"[W]hat form of Department regulation would (1) ensure just and reasonable rates for residential services; (2) be consistent with our precedent; (3) promote more competition for residential services; and (4) be compatible with our treatment of Verizon's business services?"

Phase I Order at 99. Guided by the series of tentative conclusions the Department outlined in the Phase I Order, Verizon filed its alternative regulation plan for residential services on June 5, 2002. Our investigation in Phase II will determine whether Verizon's plan does indeed meet our statutory requirements and the other criteria enumerated in the above question. As indicated in the Department's Phase I Order, and according to the procedural schedule established at the August 22, 2002 procedural conference, the other parties in the case, including the Attorney General, remain free to propose alternative plans for regulatory treatment of Verizon's retail residential services.³

Further, in the Phase I Order at 18-19, the Department concluded that while the Legislature has specified under G.L. c. 159, §§ 14, 20, that rates for telecommunications services are to be "just and reasonable" and that rates should provide a utility with "reasonable compensation" with reference to the service provided, neither statute prescribes a particular method by which the Department must fulfill its statutory mandate of setting just and reasonable rates or limits the Department to a specific regulatory scheme, such as cost of service, rate of return ratemaking, or regulation through a price cap. "When alternative methods [of rate regulation] are available, the Department is free to select or reject a particular method as long as its choice does not have a confiscatory effect or is not otherwise illegal." Massachusetts

³ The hearing officer established September 4, 2002, as the date by which intervenors must file alternative plans for regulatory treatment of Verizon's retail residential services. Testimony in rebuttal to Verizon's proposed plan must be filed by September 18, 2002. Given that the parties knew that they would be given the opportunity to propose alternative plans for residential services since the May 2002 Phase I Order, and that the parties have had notice since August 1, 2002, of the Department's proposed procedural schedule, the Department deems this schedule to be reasonable.

Electric Co. v. Department of Pub. Utils., 376 Mass. 294, 302 (1978) (addressing kindred G.L. c. 164, § 94). See also NYNEX Price Cap Regulation, D.P.U. 94-50, at 37-38, Interlocutory Order on Motion to Dismiss of NECTA (February 2, 1995). In addition, since 1985 the Department has relied on competitive market forces as suitable demonstration that rates of common carriers meet statutory requirements, with no cost-based demonstration required. See IntraLATA Competition, D.P.U. 1731 (1985). If the Department were to decide at the outset of Phase II, as the Attorney General requests, that a revenue requirements review is required by statute as the only way to ensure that Verizon's residential rates remain just and reasonable, we would not only be acting in contravention of the above conclusions, but we would also be deciding the ultimate issue of this phase of our case. In sum, the issues raised by the Attorney General concerning the appropriate regulatory approach to Verizon's retail residential services – including the need for an independent audit of Verizon's regulatory accounting – are untimely; the Attorney General should make his position as part of an affirmative case to be considered in this phase, not as an appeal to a hearing officer ruling establishing a procedural schedule.

IV. ORDER

Accordingly, after review and consideration, it is

ORDERED: That the Appeal by the Attorney General of the Hearing Officer's Ruling on the Procedural Schedule is hereby denied; and it is

FURTHER ORDERED: That all parties comply with all other directives contained herein.

By Order of the Department,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).